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Attorneys for Defendant

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARK STEELE, an individual, and DAN
ROYSE, an individual, JULIE TEAGUE, an
individual, and JERAHMEEL
CAPISTRANO, on behalf of themselves, and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., a California Corporation, and Does 1 to
10,

Defendants.

CASE NO.: C 07-5743 VRW

CLASS ACTION

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO ALLOW PLAINTIFFS TO
FILE A FIRST AMENDED COMPLAINT**

Courtroom: 6, 17th floor
Judge: Hon. Chief Judge Vaughn R
Walker

WHEREAS, Plaintiffs filed suit against Kaiser Foundation Health Plan, Inc. on November
13, 2007;

WHEREAS, Plaintiffs sent notice of Labor Code violations pursuant to the Private Attorney General Act of 2004, Labor Code Section 2699 ("PAGA"), to the Labor and Workforce Development Agency (the "LWDA") on January 30, 2008;

WHEREAS, on February 28, 2008, the LWDA informed Plaintiffs that the Agency does not intend to investigate the PAGA allegations;

WHEREAS, the parties have agreed that Plaintiffs may file the proposed First Amended Complaint, attached hereto as Exhibit #1, which adds only the PAGA allegations as a seventh (7th) cause of action;

WHEREAS, Cal. Labor Code § 2699.3(a)(2)(C) provides that an amendment to add this PAGA civil penalty claim is permitted "as a matter of right;"

NOW, THEREFORE, Plaintiffs and Defendant, through their respective counsel of record, stipulate and request that:

1. The First Amended Complaint, attached hereto as Exhibit #1, shall be filed as the operative Complaint.

IT IS SO STIPULATED AND AGREED.

Dated: ~~March~~ ^{APRIL 8}, 2008

BLUMENTHAL & NORDREHAUG

By: [Signature]
Aparajit Bhowmik
Attorneys for Plaintiffs

Dated: ~~March~~ ^{APR 18}, 2008

SEYFARTH & SHAW

By: [Signature]
Thomas R. Kaufman
Attorneys for Defendant Kaiser Foundation Health Plan, Inc.

IT IS SO ORDERED.

April 14, 2008
Dated: ~~March~~, 2008

By: [Signature]
The Honorable Judge Vaughn R. Walker
United States District Court



*Concurrence in the filing of the document has been obtained from this signatory which shall serve in lieu of his/her signature on the document.

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EXHIBIT #1

BLUMENTHAL & NORDREHAUG

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARK STEELE, an individual, and DAN
ROYSE, an individual, JULIE TEAGUE, an
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CAPISTRANO, on behalf of themselves, and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., a California Corporation, and Does 1 to
10,

Defendants.

CASE No. C 07-5743 VRW

CLASS AND COLLECTIVE ACTION
COMPLAINT FOR:

1. FAILURE TO PAY REGULAR AND OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 515.5, 551, 552, 1194 AND 1198, *et seq.*
3. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
4. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
6. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*; and,
7. LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano allege on
2 information and belief, except for their own acts and knowledge, the following:

3
4 **NATURE OF THE ACTION**

5 1. Plaintiffs Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano
6 (“PLAINTIFFS”) bring this class action on behalf of themselves and a nationwide class consisting
7 of all individuals who are or previously were employed by Defendant Kaiser Foundation Health
8 Plan, Inc. (“Kaiser Foundation Health Plan”) as Product Specialists, Business Application
9 Coordinators, and other similarly situated positions during the Collective Class Period and
10 California Class Period as hereinafter defined (the “CLASS”).

11 2. Individuals in these positions are and were employees who are entitled to be
12 classified as non-exempt, paid for regular and overtime compensation, meal and rest period breaks,
13 prompt payment of amounts that the employer owes an employee when the employee quits or is
14 terminated, and other compensation and working conditions that are prescribed by law.

15 3. Although Kaiser Foundation Health Plan requires their employees employed as
16 Product Specialists, Business Application Coordinators, and other similarly situated positions, to
17 work more than forty (40) hours a week, as a matter of policy and practice, Kaiser Foundation
18 Health Plan consistently and uniformly misclassifies these employees as exempt and denies them
19 the required overtime and other compensation that the law requires.

20 4. In this action, PLAINTIFFS, on behalf of themselves and the CLASS, seek to be
21 reclassified as non-exempt and recover all the compensation that Kaiser Foundation Health Plan
22 was required by law to provide, but failed to provide, to PLAINTIFFS and all other CLASS
23 members.

24
25 **JURISDICTION AND VENUE**

26 5. This Court has jurisdiction over PLAINTIFFS’ federal claim pursuant to
27 28 U.S.C. §1331, federal question jurisdiction, 29 U.S.C. § 219, the Fair Labor Standards Act, and
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1 28 U.S.C. § 1367, supplemental jurisdiction of state law claims.

2 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c),
3 because Kaiser Foundation Health Plan does business in this District and committed the wrongful
4 conduct against certain members of the CLASS in San Francisco County, California.

5
6 **PARTIES**

7 7. Plaintiff Mark Steele was employed by Defendant Kaiser Foundation Health Plan
8 from on or about August of 2005 to on or about March 6, 2007, in the state of California, city of San
9 Francisco.

10 8. Plaintiff Dan Royse was employed by Defendant Kaiser Foundation Health Plan
11 from on or about April of 2005 to on or about January of 2007, in the state of California, city of San
12 Francisco.

13 9. Plaintiff Julie Teague was employed by Defendant Kaiser Foundation Health Plan
14 from on or about August 2005 to on or about April of 2006, in the state of California, city of San
15 Francisco.

16 10. Plaintiff Jerahmeel Capistrano was employed by Defendant Kaiser Foundation
17 Health Plan from on or about August of 2005 to on or about July of 2007, in the state of California,
18 city of San Francisco.

19 11. Defendant Kaiser Foundation Health Plan, was and is a California Corporation with
20 its principal place of business in the State of California. Defendant Kaiser Foundation Health Plan
21 also conducts business in eight (8) other states in the United States and in the District of Columbia
22 and is engaged in commerce within the meaning of the Fair Labor Standards Act by regularly and
23 recurrently receiving or transmitting interstate communications between these states and the District
24 of Columbia.

25 12. The Defendants, Kaiser Foundation Health Plan, named in this Complaint, and
26 Does 1 through 10, inclusive, are, and at all times mentioned herein were, the agents, servants,
27 and/or employees of each of the other Defendant and each Defendant was acting within the course
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1 of scope of his, her or its authority as the agent, servant and/or employee of each of the other
2 Defendant (the "DEFENDANTS"). Consequently, all the DEFENDANTS are jointly and severally
3 liable to the PLAINTIFFS and the other members of the CLASS, for the losses sustained as a
4 proximate result of DEFENDANTS' conduct.

5
6 **COLLECTIVE ACTION UNDER THE FLSA**

7 13. PLAINTIFFS bring this lawsuit as a collective action under the Fair Labor and
8 Standards Act, 29 U.S.C. § 201, et seq. (the "FLSA"), on behalf of all persons who were, are, or will
9 be employed by Defendant Kaiser Foundation Health Plan as Product Specialists, Business
10 Application Coordinators, and other similarly situated positions, at any time within the applicable
11 statute of limitations period (the "COLLECTIVE CLASS PERIOD"), who have been misclassified
12 as exempt from overtime and have not been fully compensated for all actual time worked and wages
13 earned and other benefits, (the "COLLECTIVE CLASS"). To the extent equitable tolling operates
14 to toll claims by the COLLECTIVE CLASS against DEFENDANT, the COLLECTIVE CLASS
15 PERIOD should be adjusted accordingly. The COLLECTIVE CLASS includes all such persons,
16 whether or not they were paid by commission, by salary, or by part commission and part salary.

17 14. Questions of law and fact common to the COLLECTIVE CLASS as a
18 whole, but not limited to the following, include:

- 19 a. Whether DEFENDANT misclassified PLAINTIFFS and members of the
20 COLLECTIVE CLASS as exempt from the overtime requirements imposed by the
21 FLSA, 29 U.S.C. § 207;
- 22 b. Whether DEFENDANTS failed to adequately compensate the members
23 of the COLLECTIVE CLASS for overtime hours worked as required by the FLSA,
24 29 U.S.C. § 207;
- 25 c. Whether DEFENDANTS failed to adequately compensate the members of the
26 COLLECTIVE CLASS for time all worked for the benefit of DEFENDANTS as
27 required by the FLSA, including the time worked through their meal periods
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1 providing "Lunch and Learn" presentations to DEFENDANTS' employees and the
2 time worked during the "Technical Dress Rehearsals";

- 3 d. Whether DEFENDANTS have systematically misclassified the members of the
4 COLLECTIVE CLASS as exempt from receiving overtime compensation under
5 section 13 of the FLSA and the applicable provisions of the Code of Federal
6 Regulations;
7 e. Whether DEFENDANTS should be enjoined from continuing the unlawful practices;
8 and,
9 f. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

10 15. The first cause of action for the violations of the FLSA may be brought
11 and maintained as an "opt-in" collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.
12 216(b), for all claims asserted by the representative PLAINTIFFS of the COLLECTIVE CLASS
13 because the claims of the PLAINTIFFS are similar to the claims of the members of the prospective
14 COLLECTIVE CLASS.

15 16. PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano and
16 the COLLECTIVE CLASS are similarly situated, have substantially similar job requirements and
17 pay provisions, and are subject to Kaiser Foundation Health Plan's common and uniform policy
18 and practice misclassifying their business of failing to pay for all actual time worked and wages
19 earned, and failing to fully pay for all overtime in violation of the FLSA and the Regulations
20 implementing the Act as enacted by the Secretary of Labor (the "REGULATIONS").

21
22 **CLASS ACTION ALLEGATIONS**

23 17. PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano bring
24 this action on behalf of themselves in their respective individual capacities and also on behalf of a
25 California Class of all employees of DEFENDANTS who worked for Kaiser Foundation Health
26 Plan in California who held the positions of Product Specialist, Business Application Coordinator,
27 and other similarly situated positions, who were misclassified as exempt from overtime during the
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1 period commencing on the date four years prior to the filing of this complaint and ending on the
2 class period cutoff date (the "CALIFORNIA CLASS PERIOD"). This class is hereinafter referred
3 to as the "CALIFORNIA CLASS." The CALIFORNIA CLASS includes all such persons, whether
4 or not they were paid by commission, by salary, or by part commission and part salary.

5 18. DEFENDANTS, as a matter of corporate policy, practice and procedure,
6 and in violation of the applicable California Labor Code ("Labor Code") and Industrial Welfare
7 Commission ("IWC") Wage Order Requirements intentionally and knowingly, on the basis of job
8 title alone and without regard to the actual overall requirements of the job, systematically
9 misclassified the PLAINTIFFS and the other members of the CALIFORNIA CLASS as exempt
10 from overtime wages and other labor laws in order to avoid the payment of overtime wages by
11 misclassifying their positions as exempt from overtime wages and other labor laws. To the extent
12 equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the
13 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

14 19. DEFENDANTS violated the rights of the CALIFORNIA CLASS under
15 California Law by:

- 16 (a) Committing an act of unfair competition in violation of the California Labor
17 Code, by failing to pay PLAINTIFFS and the members of the CALIFORNIA
18 CLASS overtime pay for a work day longer than eight (8) hours and/or a
19 work week longer than forty (40) and by violating the California Labor Code
20 and regulations promulgated thereunder as hereinafter alleged.
- 21 (b) Violating Cal. Lab. Code § 510 by failing to pay PLAINTIFFS and the
22 members of the CALIFORNIA CLASS overtime pay for a work day longer
23 than eight (8) hours and/or a work week longer than forty (40) hours for
24 which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194.
- 25 (c) Violating Cal. Lab. Code § 515.5 by misclassifying PLAINTIFFS and the
26 members of the CALIFORNIA CLASS as exempt from receiving overtime
27 compensation.
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- 1 (d) Violating Cal. Lab. Code § 203, which provides that when an employee is
2 discharged or quits from employment, the employer must pay the employee
3 all wages due without abatement, by failing to tender full payment and/or
4 restitution of wages owed or in the manner required by California law to the
5 PLAINTIFFS and the members of the CALIFORNIA CLASS who have
6 terminated their employment. Thus, DEFENDANTS are liable for such
7 wages for a period of thirty (30) days following the termination of such
8 employment.
- 9 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
10 members of the CALIFORNIA CLASS with an accurate itemized statement
11 in writing showing the total hours worked by the employee.
- 12 (f) Violating Cal. Lab. Code §§ 1198 and 226.7 and the regulations and orders
13 implementing the Code, by failing to provide PLAINTIFFS and the members
14 of the CALIFORNIA CLASS with rest and/or meal periods and are thus
15 liable for premium pay of one hour for each workday such rest and/or meal
16 periods were denied.

17 20. This Class Action meets the statutory prerequisites for the maintenance
18 of a Class Action as set forth in Rule 23 of the Federal Rules of Civil Procedure ("F.R.C.P."), in
19 that:

- 20 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
21 the joinder of all such persons is impracticable and the disposition of their
22 claims as a class will benefit the parties and the Court;
- 23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
24 are raised in this Complaint are common to the CALIFORNIA CLASS and
25 will apply uniformly to every member of the CALIFORNIA CLASS;
- 26 (c) The claims of the representative PLAINTIFFS are typical of the claims of
27 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all other
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1 members of the CALIFORNIA CLASS, were systematically misclassified as
2 exempt and sustained economic injuries arising from DEFENDANTS'
3 violations of the laws of California. PLAINTIFFS and the members of the
4 CALIFORNIA CLASS were and are similarly or identically harmed by the
5 same unlawful, deceptive, unfair and pervasive pattern of misconduct
6 engaged in by the DEFENDANTS of systematically misclassifying as exempt
7 all Product Specialists, Business Application Coordinators, and similarly
8 situated employees solely on the basis of their job title and without regard to
9 DEFENDANTS' realistic expectations and the actual, overall requirements of
10 the job resulting in economic injury to employees so misclassified.

11 (d) The representative PLAINTIFFS will fairly and adequately represent and
12 protect the interest of the CALIFORNIA CLASS, and has retained counsel
13 who are competent and experienced in Class Action litigation. There are no
14 material conflicts between the claims of the representative PLAINTIFFS and
15 the members of the CALIFORNIA CLASS that would make class
16 certification inappropriate. Counsel for the CALIFORNIA CLASS will
17 vigorously assert the claims of all Class Members.

18 21. In addition to meeting the statutory prerequisites to a Class Action, this
19 action is properly maintained as a Class Action pursuant to F.R.C.P. 23, in that:

20 (a) Without class certification and determination of declaratory, injunctive,
21 statutory and other legal questions within the class format, prosecution of
22 separate actions by individual members of the CALIFORNIA CLASS will
23 create the risk of:

24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA CLASS which would establish
26 incompatible standards of conduct for the parties opposing the
27 CALIFORNIA CLASS; or,
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1 2) Adjudication with respect to individual members of the
2 CALIFORNIA CLASS which would as a practical matter be
3 dispositive of interests of the other members not party to the
4 adjudication or substantially impair or impede their ability to protect
5 their interests.

6 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
7 generally applicable to the CALIFORNIA CLASS, making appropriate class-
8 wide relief with respect to the CALIFORNIA CLASS as a whole in that the
9 DEFENDANTS systematically misclassified as exempt all Product
10 Specialists, Business Application Coordinators and similarly situated
11 employees solely on the basis of their job title and without regard to
12 DEFENDANTS' realistic expectations and actual overall requirements of the
13 job;

14 (c) Common questions of law and fact exist as to the members of the
15 CALIFORNIA CLASS and predominate over any question affecting only
16 individual members, and a Class Action is superior to other available
17 methods for the fair and efficient adjudication of the controversy, including
18 consideration of:

- 19 1) The interests of the members of the CALIFORNIA CLASS in
20 individually controlling the prosecution or defense of separate actions;
21 2) The extent and nature of any litigation concerning the controversy
22 already commenced by or against members of the CALIFORNIA
23 CLASS;
24 3) The desirability or undesirability of concentrating the litigation of the
25 claims in the particular forum;
26 4) The difficulties likely to be encountered in the management of a Class
27 Action; and,
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5) The basis of DEFENDANTS misclassifying PLAINTIFFS and the CALIFORNIA CLASS as exempt by job title.

22. This Court should permit this action to be maintained as a Class Action pursuant to F.R.C.P. 23 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets and available insurance of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole; and
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the

1 business records of the DEFENDANTS. The CALIFORNIA CLASS
2 consists of all of DEFENDANTS' employees employed as Product
3 Specialists, Business Application Coordinators, and other similarly situated
4 persons in California whose job classifications by DEFENDANTS as exempt
5 were made solely on the basis of their job title and without regard to
6 DEFENDANTS' realistic expectations and actual overall requirements of the
7 job. DEFENDANTS, as a matter of law, has the burden of proving the basis
8 for the exemption as to each and every Product Specialist and Business
9 Application Coordinator. To the extent that DEFENDANTS have failed to
10 maintain records sufficient to establish the basis for the exemption (including
11 but not limited to, the employee's job duties, wages, and hours worked) for
12 any Product Specialist or Business Application Coordinator, DEFENDANTS
13 are estopped, as a matter of law, to assert the existence of the exemption.
14

15 **GENERAL ALLEGATIONS**

16 23. Kaiser Foundation Health Plan, as a matter of corporate policy, practice and
17 procedure, and in violation of the applicable California Labor Code ("Labor Code"), Industrial
18 Welfare Commission ("IWC") Wage Order Requirements, and the applicable provisions of the
19 FLSA, intentionally, knowingly, and wilfully, on the basis of job title alone and without regard to
20 the actual overall requirements of the job, systematically misclassified the PLAINTIFFS and the
21 other members of the CALIFORNIA CLASS and the COLLECTIVE CLASS (the "CLASS") as
22 exempt from overtime wages and other labor laws in order to avoid the payment of overtime wages
23 by misclassifying their Product Specialist, Business Application Coordinator, and other similarly
24 situated employees as exempt from overtime wages and other labor laws. To the extent equitable
25 tolling operates to toll claims by the CLASS against Kaiser Foundation Health Plan, the
26 CALIFORNIA CLASS PERIOD and the COLLECTIVE CLASS PERIOD (the "CLASS
27 PERIODS") should be adjusted accordingly.
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24. Kaiser Foundation Health Plan has intentionally and deliberately created numerous job levels and a multitude of job titles to create the superficial appearance of hundreds of unique jobs, when in fact, these jobs are substantially similar and can be easily grouped together for the purpose of determining whether they are exempt from overtime wages. For example, although PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano were all initially hired as "Product Specialists." Kaiser Foundation Health Plan later changed their job titles to "Business Application Coordinators" approximately two (2) months after hiring. Despite the new titles, the PLAINTIFFS continued to perform only the same job functions as "Business Application Coordinators" that they performed as "Product Specialists." Indeed, one of Kaiser Foundation Health Plan's purposes in creating and maintaining this multi-level job classification scheme is to create a roadblock to discovery and class certification for all employees similarly misclassified as exempt. Kaiser Foundation Health Plan has uniformly misclassified these CLASS members as exempt and denied them overtime wages and other benefits to which non-exempt employees are entitled in order to unfairly cheat the competition and unlawfully profit.

25. Kaiser Foundation Health Plan maintains records from which the Court can ascertain and identify by job title each of Kaiser Foundation Health Plan's employees who as CLASS members, have been systematically, intentionally and uniformly misclassified as exempt as a matter of DEFENDANT'S corporate policy, practices and procedures. PLAINTIFFS will seek leave to amend the complaint to include these additional job titles when they have been identified.

THE CONDUCT

26. Kaiser Foundation Health Plan is a California Corporation which operates in nine states and in the District of Columbia. Kaiser Foundation Health Plan is one of the largest not-for-profit managed health care companies in the United States, offering both hospital and physician care through a network of hospitals and physician practices operating under the Kaiser Permanente name.

27. PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano were hired by Defendant Kaiser Foundation Health Plan and placed into the job title of "Product

1 Specialist” in the “KP HealthConnect NCAL project.” The job title was described to the
2 PLAINTIFFS as an exempt, full time, and temporary position. Kaiser Foundation Health Plan
3 changed the job titles of PLAINTIFFS and other “Product Specialists” to “Business Application
4 Coordinator” soon after the hire. Despite the new titles, PLAINTIFFS and other newly dubbed
5 “Business Application Coordinators” continued to perform only the same job functions as “Business
6 Application Coordinators” that were previously performed as “Product Specialists.” The
7 PLAINTIFFS functioned as working members on the production side of a KP HealthConnect
8 Support Team. The job duties of PLAINTIFFS and their fellow KP HealthConnect Support Team
9 members were to provide technical support to hospital staff in connection with the Kaiser
10 Permanente HealthConnect computer system (“HealthConnect”), which is installed as part of a
11 procedure called “GoLive.” This project was instituted in order to ensure that all Kaiser Permanente
12 facilities use a common software system. Intermittently, DEFENDANTS would deploy
13 PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and Jerahmeel Capistrano, and other similarly
14 situated employees in teams to Kaiser Permanente facilities in Northern California for month-long
15 durations, where they, along with their team, provided training, technical support and assistance to
16 hospital clinicians and staff in conjunction with the installation of the HealthConnect computer
17 system during the “GoLive” procedure (the “DEPLOYMENT”). Kaiser Permanente also employs
18 this same GoLive procedure in various San Diego County facilities. The work schedule during the
19 DEPLOYMENTS lasted approximately four weeks where the PLAINTIFFS worked more than eight
20 (8) hours a day and more than forty (40) hours each week. As a result of this rigorous work
21 schedule, PLAINTIFFS and other similarly situated employees were often unable to take meal or
22 rest breaks. Furthermore, PLAINTIFFS and the other team members were also required to deliver
23 training sessions during their lunch periods called “Lunch & Learns.” The “Lunch & Learns” were
24 deliberately scheduled during the meal periods so that the hospital clinicians and staff members
25 could eat their lunch and learn about the HealthConnect system from the PLAINTIFFS, who were
26 forced to deliver these training sessions during *their* meal periods. Prior to the GoLive,
27 DEFENDANTS would also require PLAINTIFFS and their team members to participate in
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1 “Technical Dress Rehearsals.” During these sessions, PLAINTIFFS and their team members were
2 required to test the software to ensure that the HealthConnect system was functioning properly. Any
3 problems or defects would have to be reported back to the DEFENDANTS’ employees who had the
4 technical expertise to diagnose and cure the defects. In order to test the equipment without
5 disturbing the hospital staff, these Rehearsals took place either during meal periods, early in the
6 morning, or late in the evening when the staff was not working in the department. This scheduling
7 caused the workday, wherein PLAINTIFFS participated in the “Technical Dress Rehearsals,” to
8 exceed eight (8) hours. Overall, the first two weeks of the DEPLOYMENT were consistently the
9 most grueling. The five (5) to six (6) day workweek consisted of workdays which lasted as long as
10 thirteen (13) hours. Both the third and fourth weeks of the DEPLOYMENT contained five (5) to
11 six (6) workdays, during which PLAINTIFFS and their fellow team members worked approximately
12 ten (10) hours each day. Physical demands of this position include and/or included standing, sitting,
13 walking, and bending as needed to demonstrate how to use the HealthConnect computer systems to
14 hospital staff. During the Class Period, PLAINTIFFS Mark Steele, Dan Royse, Julie Teague, and
15 Jerahmeel Capistrano, and the members of their team worked and/or still work on the production
16 side during the various DEPLOYMENTS, but are nevertheless classified by DEFENDANT as
17 exempt from overtime pay and worked more than eight (8) hours a day and more than forty (40)
18 hours a week. The job duties and responsibilities described above that relate to providing technical
19 support comprised at least seventy percent (70 %) of the PLAINTIFFS’ overall job duties and
20 responsibilities.

21 28. In between the DEPLOYMENTS, PLAINTIFFS were also trained in and were
22 briefed on issues pertaining to technical support and assistance in DEFENDANTS’ several offices
23 located in Northern California throughout the calendar year. In order for their superiors to formulate
24 a plan for each department’s computer needs, PLAINTIFFS would meet with the Chief Department
25 Manager of each hospital department that expected to receive a HealthConnect computer system in
26 the future. Using a questionnaire given to them by their superiors, PLAINTIFFS would gather
27 information regarding the department’s computer needs. Thereafter, pursuant to a known protocol
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1 taught to them by their superiors, PLAINTIFFS would enter this information into a “workflow”
2 document. After all the necessary information was entered into this document from the
3 questionnaire answers, PLAINTIFFS would provide the workflow document to their superiors, who
4 were ultimately in charge of formulating the plan and deciding which specifications were needed for
5 the particular department’s HealthConnect computer system. During this period, in between the
6 DEPLOYMENTS, PLAINTIFFS also worked more than eight (8) hours a day and/or more than
7 forty (40) hours a week. The job duties and responsibilities described above that relate to
8 interviewing clients, planning, and documenting the needs of the clients comprised at most thirty
9 percent (30 %) of the PLAINTIFFS’ overall job duties and responsibilities.

10 29. None of the PLAINTIFFS, nor any member of the CLASS was
11 primarily engaged in work of a type that was or now is directly related to management policies or
12 general business operations, when giving these words a fair but narrow construction. None of the
13 PLAINTIFFS, nor any member of the CLASS was primarily engaged in work of a type that was or
14 now is performed at the level of the policy or management of the DEFENDANTS. To the contrary,
15 the work of a Product Specialist or Business Application Coordinator of the DEFENDANTS is
16 work wherein PLAINTIFFS and members of the CLASS are primarily engaged in the day to day
17 business operations of the DEFENDANTS to keep the computers that perform the day to day work
18 operating in accordance with the management policies and general business operations established
19 by DEFENDANTS’ management.

20 30. Considerations such as (a) Kaiser Foundation Health Plan’s realistic expectations for
21 the job titled Product Specialist, Business Application Coordinator, and other similarly situated
22 jobs, on the production side of the DEFENDANTS’ business enterprise in the KP HealthConnect
23 Support Team of which PLAINTIFFS were members and other similarly situated support teams, and
24 (b) the actual overall requirements of the jobs titled Product Specialist and Business Application
25 Coordinator, are susceptible to common proof. The fact that their work and those of other similarly
26 situated employees involved a computer and/or a specialized skill set in a defined technical area
27 does not mean that the PLAINTIFFS and other members of the CLASS are exempt from overtime
28 wages. Indeed, the exercise of discretion and independent judgment must be more than the use of a

1 highly technical skill set described in a manual or other sources. The work that PLAINTIFFS and
2 other members of the CLASS were and are primarily engaged in performing day to day activities is
3 the work that is required to be performed as part of the day to day business of DEFENDANTS. As
4 a result, PLAINTIFFS and the other members of the CLASS were primarily engaged in work that
5 falls squarely on the production side of the administrative/production worker dichotomy.

6 31. DEFENDANTS systematically misclassified as exempt PLAINTIFFS and
7 all other members of the CALIFORNIA CLASS and COLLECTIVE CLASS solely on the basis of
8 their job title and without regard to DEFENDANTS' realistic expectations and actual overall
9 requirements of the job. Consequently, PLAINTIFFS and the other members of the CALIFORNIA
10 CLASS and COLLECTIVE CLASS uniformly and systematically exempted from payment for
11 overtime wages for hours worked in excess of eight (8) hours per day and/or (40) forty hours per
12 week during the CLASS PERIOD.

13 32. Cal. Lab. Code § 515 appoints the Industrial Welfare Commission to
14 establish exemptions from the requirement that an overtime rate of compensation be paid pursuant
15 to Sections 510 and 511 for executive, administrative, and professional employees, provided that the
16 employee is primarily engaged in the duties that meet the test of the exemption, customarily and
17 regularly exercises discretion and independent judgment in performing those duties, and earns a
18 monthly salary equivalent to no less than two times the state minimum wage for full-time
19 employment. California Labor Code Section 515.5 and Industrial Welfare Commission Wage Order
20 4-2001, set forth the requirements which must be satisfied in order for a computer employee to be
21 lawfully classified as exempt. Although wrongfully classified by DEFENDANTS as exempt at the
22 time of hire and thereafter, PLAINTIFFS, and all other members of the similarly-situated
23 CALIFORNIA CLASS, are not exempt under Industrial Welfare Commission Wage Order 4-2001,
24 and Cal. Lab. Code § 515.5.

25 33. Section 13 of the FLSA and 29 Code of Federal Regulations Part 541, et
26 seq., set forth the requirements which must be satisfied in order for an employee to be lawfully
27 classified as exempt from receiving overtime compensation. Although wrongfully classified by
28 DEFENDANTS as exempt at the time of hire and thereafter, PLAINTIFFS, and all other members

1 of the similarly-situated COLLECTIVE CLASS, are not exempt under section 13 of the FLSA or
2 the provisions of 29 C.F.R. 541, et seq.

3 34. Accordingly, and despite the fact that PLAINTIFFS, and the other members of the
4 CLASS, regularly worked in excess of 8 hours a day and/or 40 hours per week, they did not receive
5 overtime compensation and as a result suffered an economic injury.

6 35. In addition, under Cal. Lab. Code §§ 226.7 and 512, PLAINTIFFS and
7 other members of the CALIFORNIA CLASS, were required to be provided with rest period breaks
8 each workday. DEFENDANTS failed to provide PLAINTIFFS and all other members of the
9 CALIFORNIA CLASS with the statutorily required rest period breaks during the CALIFORNIA
10 CLASS PERIOD, which has caused additional economic injuries to PLAINTIFFS and other
11 members of the CALIFORNIA CLASS.

12 36. Further, under Cal. Lab. Code §§ 226.7 and 512, PLAINTIFFS and other
13 members of the CALIFORNIA CLASS, were required to be provided with meal breaks each
14 workday. DEFENDANTS failed to provide PLAINTIFFS and all other members of the
15 CALIFORNIA CLASS with the statutorily required uninterrupted meal breaks during the
16 CALIFORNIA CLASS PERIOD, thereby causing additional economic injuries to PLAINTIFFS and
17 other members of the CALIFORNIA CLASS.

18 37. Under 29 U.S.C. § 207, PLAINTIFFS and other members of the COLLECTIVE
19 CLASS, were required to be compensated for all meal breaks taken by PLAINTIFFS and the other
20 members of the COLLECTIVE CLASS where they performed duties predominantly for the benefit
21 of the DEFENDANTS during the meal breaks. Under 29 CFR 785.19, this time spent during the
22 lunch break is compensable because PLAINTIFFS and the other members of the COLLECTIVE
23 CLASS were required to perform duties while eating.

24
25 **FIRST CAUSE OF ACTION**

26 **Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")**

27 **(By PLAINTIFFS and the COLLECTIVE CLASS and Against all DEFENDANTS)**

28 38. PLAINTIFFS, and the other members of the COLLECTIVE CLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 37
2 of this Complaint.

3 39. DEFENDANTS are engaged in communication, business, and transmission between
4 California, nine other states in the United States, and the District of Columbia, and is, therefore,
5 engaged in commerce within the meaning of 29 U.S.C. § 203(b).

6 40. 29 U.S.C. § 255 provides that a three-year statute of limitations applies
7 to willful violations of the FLSA.

8 41. 29 U.S.C. § 207(a)(1) provides in pertinent part:

9 Except as otherwise provided in this section, no employer shall employ any of his
10 employees who in any workweek is engaged in commerce or in the production of
11 goods for commerce, or is employed in an enterprise engaged in commerce or in the
12 production of goods for commerce, for a workweek longer than forty hours unless
13 such employee receives compensation for his employment in excess of the hours
14 above specified at a rate not less than one and one-half times the regular rate at which
15 he is employed.

16 42. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not
17 apply to:

18 any employee employed in a bona fide executive, administrative, or professional
19 capacity (including any employee employed in the capacity of academic
20 administrative personnel or teacher in elementary or secondary schools), or in the
21 capacity of outside salesman (as such terms are defined and delimited from time to
22 time by regulations of the Secretary, subject to the provisions of the Administrative
23 Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee of a retail or
24 service establishment shall not be excluded from the definition of employee
25 employed in a bona fide executive or administrative capacity because of the number
26 of hours in his workweek which he devotes to activities not directly or closely related
27 to the performance of executive or administrative activities, if less than 40 per
28

centum of his hours worked in the workweek are devoted to such activities).

43. DEFENDANTS have willfully engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed above, by uniformly designating certain employees as "exempt" employees, by their job title and without regard to DEFENDANTS' realistic expectations and actual overall requirements of the job, including PLAINTIFFS and the other members of the COLLECTIVE CLASS who worked on the production side of the DEFENDANTS' business enterprise, including the KP HealthConnect Support Teams. This was done in an illegal attempt to avoid payment of overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations requirements.

44. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, PLAINTIFFS and the members of the COLLECTIVE CLASS are entitled to compensation for all hours actually worked, including time spent training DEFENDANTS' employees during meal periods, and are also entitled to wages at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any workweek.

45. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

46. The exemptions of the FLSA as listed in section 13(a), and as explained by 29 C.F.R. 541.3, do not apply to PLAINTIFFS and the other members of the COLLECTIVE CLASS, because their work consists of non-management, production line labor performed with skills and knowledge acquired from on-the-job training, rather than from the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archeologists. PLAINTIFFS do not hold a computer related bachelor's degree, have not taken any prolonged course of specialization relating to network systems or infrastructure, and have attained the vast majority of the skills used as an employee of DEFENDANTS from on the job training.

47. For an employee to be exempt as a bona fide "executive," all the

1 following criteria must be met and DEFENDANTS have the burden of proving that:

- 2 (a) The employee's primary duty must be management of the enterprise, or of a
3 customarily recognized department or subdivision;
- 4 (b) The employee must customarily and regularly direct the work of at least two (2) or
5 more other employees;
- 6 (c) The employee must have the authority to hire and fire, or to command particularly
7 serious attention to his or his recommendations on such actions affecting other
8 employees; and,
- 9 (d) The employee must be primarily engaged in duties which meet the test of exemption.

10 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the
11 requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R. 541.100.

12 Moreover, none of the members of the COLLECTIVE CLASS were senior or lead computer
13 programmers who managed the work of two or more other programmers in a customarily
14 recognized department or subdivision of the employer, and whose recommendations as to the hiring,
15 firing, advancement, promotion or other change of status of the other programmers were given
16 particular weight and therefore, they do not qualify for the executive exemption as a computer
17 employees under 29 C.F.R. 541.402.

18 48. For an employee to be exempt as a bona fide "administrator," all of the
19 following criteria must be met and DEFENDANTS have the burden of proving that:

- 20 (a) The employee must perform office or non-manual work directly related to
21 management or general business operation of the employer or the employer's
22 customers;
- 23 (b) The employee must customarily and regularly exercise discretion and independent
24 judgment with respect to matters of significance; and,
- 25 (c) The employee must regularly and directly assist a proprietor or an exempt
26 administrator; or,
- 27 (d) The employee must perform under only general supervision, work requiring special
28 training, experience, or knowledge; and,

(e) The employee must be primarily engaged in duties which meet the test of exemption. No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet the requirements of for being an "administrator" under section 13(a) of the FLSA and 29 C.F.R. 541.300. Moreover, their primary duty does not include work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers and therefore, they are not qualified for the administrative exemption as computer employees under 29 C.F.R. 541.402.

49. For an employee to be "exempt" as a bona fide "professional", the DEFENDANTS have the burden of proving that the primary duty of the employee is the performance of work that:

- (a) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- (b) Requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet the requirements of being an "professional" within the meaning of 29 CFR 541.300.

50. For an employee to be "exempt" as a computer software employee, DEFENDANTS have the burden of showing that the primary duty of the employee consists of:

- (a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (b) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (c) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- (d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

The "primary duty" of the PLAINTIFFS, and the other members of the COLLECTIVE CLASS, as

1 defined in 29 C.F.R. 541.700, did not consist of the job functions outlined above. Rather, the
2 primary duty of the PLAINTIFFS, and the other members of the COLLECTIVE CLASS, consisted
3 of providing technical support to DEFENDANTS' clinicians and staff as part of the KP
4 HealthConnect Project. Although the primary duty was highly dependent on and facilitated by the
5 use of computers and computer software programs, the primary duty did not involve:

- 6 (1) the determination of hardware, software, or system functional specifications;
- 7 (2) the design, development, documentation, analysis, creation, testing, or modification
8 of computer systems or programs; or
- 9 (3) a combination of these duties, the performance of which requiring the same level of
10 skills.

11 Rather than consulting with users to determine specifications, PLAINTIFFS gathered information
12 from various Kaiser Permanente Departments, which was later provided to their superiors.
13 PLAINTIFFS' superiors, thereafter, would determine the functional specifications for each
14 department, leaving PLAINTIFFS to engage in customer service functions by providing basic user
15 support to DEFENDANTS' employees. Further, PLAINTIFFS and their fellow team members
16 operated under a substantial amount of scrutiny from management in providing the technical support
17 and in performing the other non-exempt functions that constituted their primary duties. Thus, no
18 member of the COLLECTIVE CLASS was or is exempt as a computer systems analyst, computer
19 programmer, or software engineer because they all fail to meet the requirements of being a
20 "professional" within the meaning of 29 U.S.C. § 213 and 29 C.F.R. 541.400.

21 51. During the COLLECTIVE CLASS PERIOD, the PLAINTIFFS, and other
22 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and
23 were also required to perform duties that were primarily for the benefit of the employer during meal
24 periods.

25 52. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
26 other members of the COLLECTIVE CLASS, overtime compensation for the hours they have
27 worked in excess of the maximum hours permissible by law as required by section 207 of the FLSA,
28 even though PLAINTIFFS, and the other members of the COLLECTIVE CLASS, were regularly

1 required to work, and did in fact work, overtime hours.

2 53. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
3 other members of the COLLECTIVE CLASS, regular compensation for the hours they have
4 worked, performing duties primarily for the benefit of the employer during meal periods.

5 54. For purposes of the Fair Labor Standards Act, the employment practices
6 of DEFENDANTS were and are uniform throughout California in all respects material to the claims
7 asserted in this Complaint.

8 55. There are no other exemptions applicable to PLAINTIFFS and/or to
9 members of the COLLECTIVE CLASS.

10 56. As a result of DEFENDANTS' failure to pay overtime and failure to pay
11 regular compensation for hours worked during meal periods, as required by the FLSA, PLAINTIFFS
12 and the members of the COLLECTIVE CLASS were damaged in an amount to be proved at trial.

13 57. Therefore, PLAINTIFFS demand that they and the members of the
14 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour of
15 overtime worked in any work week for which they were not compensated, regular compensation for
16 every hour worked primarily for the benefit of DEFENDANTS for which they were not
17 compensated, plus interest and attorneys' fees as provided by law.

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Overtime Compensation**

21 **[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

22 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against all DEFENDANTS)**

23 58. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
24 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 57
25 of this Complaint.

26 59. Cal. Lab. Code § 510 states in relevant part:

27
28 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in

one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

60. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

61. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

62. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

63. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

64. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

65. DEFENDANTS have intentionally and uniformly designated certain employees as "exempt" employees, by their job title and without regard to DEFENDANTS' realistic expectations and actual overall requirements of the job, including PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS who worked on the production side of the DEFENDANTS'
2 business enterprise, including the KP HealthConnect Support Teams. This was done in an illegal
3 attempt to avoid payment of overtime wages and other benefits in violation of the Cal. Lab. Code
4 and Industrial Welfare Commission requirements.

5 66. For an employee to be exempt as a bona fide "executive," all the
6 following criteria must be met and DEFENDANTS have the burden of proving that:

- 7 (a) The employee's primary duty must be management of the enterprise, or of a
8 customarily recognized department or subdivision; and,
- 9 (b) The employee must customarily and regularly direct the work of at least two (2) or
10 more other employees; and,
- 11 (c) The employee must have the authority to hire and fire, or to command particularly
12 serious attention to his or his recommendations on such actions affecting other
13 employees; and,
- 14 (d) The employee must customarily and regularly exercise discretion and independent
15 judgment; and,
- 16 (e) The employee must be primarily engaged in duties which meet the test of exemption.

17 No member of the CALIFORNIA CLASS was or is an executive because they all fail to meet the
18 requirements of being an "executive" within the meaning of Order No. 4-2001.

19 67. For an employee to be exempt as a bona fide "administrator," all of the
20 following criteria must be met and DEFENDANTS have the burden of proving that:

- 21 (a) The employee must perform office or non-manual work directly related to
22 management policies or general business operation of the employer; and,
- 23 (b) The employee must customarily and regularly exercise discretion and independent
24 judgment; and,
- 25 (c) The employee must regularly and directly assist a proprietor or an exempt
26 administrator; or,
- 27 (d) The employee must perform, under only general supervision, work requiring special
28 training, experience, or knowledge, or,

(e) The employee must execute special assignments and tasks under only general supervision; and,

(f) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the CALIFORNIA CLASS was or is an administrator because they all fail to meet the requirements for being an "administrator" under Order No. 4-2001.

68. The Industrial Welfare Commission, ICW Wage Order 4-2001, at section (1)(A)(3)(h), at Labor Code § 515, and Cal. Lab. § 515.5 also set forth the requirements which must be complied with to place an employee in the "professional" exempt category. For an employee to be "exempt" as a bona fide "professional", all the following criteria must be met and DEFENDANTS have the burden of proving that:

(a) The employee is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

- 1) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part or necessarily incident to any of the above work; or,
- 2) Work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee or work that is an essential part of or incident to any of the above work; and,
- 3) Whose work is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be standardized in relation to a given period of time.

(b) The employee must customarily and regularly exercise discretion and independent judgment; and.

- 1 (c) The employee earns a monthly salary equivalent to no less than two (2) times the
2 state minimum wage for full-time employment. No member of the CALIFORNIA
3 CLASS was or is a professional because they all fail to meet the requirements of
4 being a "professional" within the meaning of Order No. 4-2001.

5 In particular, for an employee to be "exempt" as a bona fide "professional" with respect to the
6 requirements for a computer software employee, all the following criteria must be met and
7 DEFENDANTS have the burden of proving that:

- 8 (a) The employee must primarily perform work which is intellectual or creative and that
9 requires the exercise of discretion and independent judgment; and,
10 (b) The employee is primarily engaged in duties which consist of one or more of the
11 following:
12 1) the application of systems analysis techniques and procedures, including
13 consulting with users, to determine hardware, software, or system functional
14 specifications;
15 2) the design, development, documentation, analysis, creation, testing or
16 modification of computer systems or programs, including prototypes, based
17 on and related to user or system design specifications;
18 3) the documentation, testing, creation or modification of computer programs
19 related to the design of the software or hardware for computer operating
20 systems; and,
21 (c) The employee must be highly skilled and proficient in the theoretical and practical
22 application of highly specialized information to computer systems analysis,
23 programming and software engineering. A job title shall not be determinative of the
24 applicability of this exemption; and,
25 (d) The employee's hourly rate of pay is not less than forty-one dollars (\$ 41.00), or the
26 annualized full-time salary equivalent of that rate, provided that all other
27 requirements of this section are met and that in each workweek the employee
28 receives not less than forty-one dollars (\$ 41.00) per hour worked. This is the rate

1 which is adjusted by the DLSR on October 1 of each year to be effective on January
2 1 of the following year by an amount equal to the percentage increase in the
3 California Consumer Price Index for Urban Wage Earners and Clerical Workers.

4 1) The adjusted rates for each year of the CALIFORNIA CLASS PERIOD are as
5 follows: In 2003, the rate was \$43.58. In 2004, the rate was \$44.63. In 2005,
6 the rate was \$45.84. In 2006, the rate was \$47.81. Currently, in 2007, the
7 rate is \$49.77. No member of the CALIFORNIA CLASS was or is an
8 exempt "Computer Software Employee" because they all fail to meet the
9 requirements of Order No. 4-2001.

10 PLAINTIFFS and all members of the CALIFORNIA CLASS were paid less than these amounts
11 during the Class Period.

12 69. PLAINTIFFS, and other members of the CALIFORNIA CLASS, do not
13 fit the definition of an exempt executive, administrative, or professional employee because:

- 14 (a) They did not work as executives or administrators; and,
15 (b) The professional exemption articulated in Wage Order 4-2001, section (1)(A)(3)(h)
16 and Labor Code § 515, and the professional exemption articulated in Cal. Lab. Code
17 § 515.5, does not apply to PLAINTIFFS, nor to the other members of the
18 CALIFORNIA CLASS, because they are either computer software employees paid
19 less than the requisite amount set forth in Cal. Lab. § 515.5(a)(4) and under
20 subdivision (1)(A)(3)(h)(iv) of Order No. 4-2001, and/or did not otherwise meet all
21 the applicable requirements to work under the exemption of computer software
22 employee for the reasons set forth above in this Complaint.

23 70. During the class period, the PLAINTIFFS, and other members of the
24 CALIFORNIA CLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a
25 work week.

26 71. At all relevant times, DEFENDANTS failed to pay PLAINTIFFS, and
27 other members of the CALIFORNIA CLASS, overtime compensation for the hours they have
28 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510

1 and 1198, even though PLAINTIFFS, and the other members of the CALIFORNIA CLASS, were
2 regularly required to work, and did in fact work, overtime hours.

3 72. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the
4 PLAINTIFFS, and the other members of the CALIFORNIA CLASS, for their regular and overtime
5 hours, the PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered, and
6 will continue to suffer, an economic injury in amounts which are presently unknown to them and
7 which will be ascertained according to proof at trial.

8 73. DEFENDANTS knew or should have known that PLAINTIFFS, and the
9 other members of the CALIFORNIA CLASS, were misclassified as exempt and DEFENDANTS
10 systematically elected, either through intentional malfeasance or gross nonfeasance, not to pay them
11 for their overtime labor as a matter of uniform corporate policy, practice and procedure.

12 74. Therefore, PLAINTIFFS, and the other members of the CALIFORNIA
13 CLASS, request recovery of regular and overtime compensation according to proof, interest,
14 attorney's fees and cost pursuant to Cal. Lab. Code § 218.5 and § 1194(a), as well as the assessment
15 of any statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code
16 and/or other statutes. Further, PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
17 are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§
18 218.5 and 1194.

19 75. In performing the acts and practices herein alleged in violation of labor
20 laws and refusing to provide the requisite regular and overtime compensation, the DEFENDANTS
21 acted and continue to act intentionally, oppressively, and maliciously toward the PLAINTIFFS, and
22 toward the other members of the CALIFORNIA CLASS, with a conscious and utter disregard of
23 their legal rights, or the consequences to them, and with the despicable intent of depriving them of
24 their property and legal rights and otherwise causing them injury in order to increase corporate
25 profits at the expense of PLAINTIFFS and the members of the Class.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code § 203]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)

76. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 75 of this Complaint.

77. Cal. Lab. Code § 200 provides that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

78. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

79. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is

1 discharged or who quits, the wages of the employee shall continue as a penalty from
2 the due date thereof at the same rate until paid or until an action therefor is
3 commenced; but the wages shall not continue for more than 30 days.

4 80. Many of the California Class members have terminated their employment and
5 DEFENDANTS have not tendered restitution of wages owed.

6 81. Therefore, as provided by Cal lab. Code § 203, on behalf of himself and
7 the members of the CALIFORNIA CLASS, PLAINTIFFS demand thirty days of pay as penalty for
8 not paying all wages due at time of termination for all employees who terminated employment
9 during the CALIFORNIA CLASS PERIOD and demand an accounting and payment of all wages
10 due, plus interest, as provided by Cal lab. Code § 218.6 plus attorneys fees and interest as allowed
11 by law.

12
13 **FOURTH CAUSE OF ACTION**

14 **For Failure to Provide Meal and Rest Periods**

15 **[Cal. Lab. Code §§ 226.7 and 512]**

16 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)**

17 82. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
18 reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 81 of
19 this Complaint.

20 83. Cal. Lab. Code § 512 provide, in relevant part: "An employer may not employ an
21 employee for a work period of more than five hours per day without providing the
22 employee with a meal period of not less than 30 minutes, except that if the total work
23 period per day of the employee is no more than six hours, the meal period may be
24 waived by mutual consent of both the employer and employee. An employer may not
25 employ an employee for a work period of more than 10 hours per day without
26 providing the employee with a second meal period of not less than 30 minutes,
27 except that if the total hours worked is no more than 12 hours, the second meal
28 period may be waived by mutual consent of the employer and the employee only if

1 the first meal period was not waived.

2 84. Section 11 of the Order 4-2001 of the Industrial Wage Commission
3 provides, in relevant part:

4 Meal Periods:

5 (A) No employer shall employ any person for a work period of more than five (5)
6 hours without a meal period of not less than 30 minutes, except that when a
7 work period of not more than six (6) hours will complete the day's work the
8 meal period may be waived by mutual consent of the employer and the
9 employee. Unless the employee is relieved of all duty during a 30 minute
10 meal period, the meal period shall be considered an "on duty" meal period
11 and counted as time worked. An "on duty" meal period shall be permitted
12 only when the nature of the work prevents an employee from being relieved
13 of all duty and when by written agreement between the parties an on-the-job
14 paid meal period is agreed to. The written agreement shall state that the
15 employee may, in writing, revoke the agreement at any time.

16 (B) If an employer fails to provide an employee a meal period in accordance with
17 the applicable provisions of this order, the employer shall pay the employee
18 one (1) hour of pay at the employee's regular rate of compensation for each
19 workday that the meal period is not provided.

20 85. Section 12 of the Order 4-2001 of the Industrial Wage Commission
21 provides, in relevant part:

22 Rest Periods:

23 (A) Every employer shall authorize and permit employees to take rest periods,
24 which insofar as practicable shall be in the middle of each work period. The
25 authorized rest period time shall be based on the total hours worked daily at
26 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof. However, a rest period need not be authorized for employees whose
28 total daily work time is less than three and one-half (3-1/2) hours. Authorized

rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

86. Cal. Lab. Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

87. DEFENDANTS have intentionally and improperly failed to provide all rest and/or meal periods without any work or duties to PLAINTIFFS and the other members of the CALIFORNIA CLASS who worked more than three and one half hours (3 ½) per day, and by failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

88. Therefore, PLAINTIFFS demand on behalf of himself and the members of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not provided for each four (4) hours of work during the period commencing on the date that is within four years prior to the filing of this Complaint and one (1) hour of pay for each five (5) hours of work in which a meal period was not provided.

FIFTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)

89. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,

1 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 88
2 of this Complaint.

3 90. Cal. Labor Code § 226 provides that an employer must furnish
4 employees with an "accurate itemized statement in writing showing:

5 (1) gross wages earned,

6 (2) total hours worked by the employee, except for any employee whose compensation is
7 solely based on a salary and who is exempt from payment of overtime under subdivision (a)
8 of Section 515 or any applicable order of the Industrial Welfare Commission,

9 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
10 on a piece-rate basis,

11 (4) all deductions, provided that all deductions made on written orders of the employee may
12 be aggregated and shown as one item,

13 (5) net wages earned,

14 (6) the inclusive dates of the period for which the employee is paid,

15 (7) the name of the employee and his or her social security number, except that by January 1,
16 2008, only the last four digits of his or her social security number or an employee
17 identification number other than a social security number may be shown on the itemized
18 statement,

19 (8) the name and address of the legal entity that is the employer, and

20 (9) all applicable hourly rates in effect during the pay period and the corresponding number
21 of hours worked at each hourly rate by the employee."

22 91. At all times relevant herein, DEFENDANTS violated Labor Code § 226,
23 in that DEFENDANTS failed to properly and accurately itemize the number of hours worked by
24 PLAINTIFFS, and the other members of the CALIFORNIA CLASS at the effective regular rates of
25 pay and the effective overtime rates of pay.

26 92. DEFENDANTS knowingly and intentionally failed to comply with
27 Labor Code § 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA
28 CLASS. These damages include, but are not limited to, costs expended calculating the true hours

1 worked and the amount of employment taxes which were not properly paid to state and federal tax
2 authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS, and the other
3 members of the CLASS elect to recover liquidated damages of \$50.00 for the initial pay period in
4 which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to
5 Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than
6 \$4,000.00 for PLAINTIFFS and each respective member of the CALIFORNIA CLASS herein) plus
7 reasonable attorney's fees and costs pursuant to Labor Code § 226(g).

8
9 **SIXTH CAUSE OF ACTION**

10 **For Unlawful Business Practices**

11 **[Cal. Bus. And Prof. Code § 17200 et seq.]**

12 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)**

13 93. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 92 of this
15 Complaint.

16 94. DEFENDANTS are "persons" as that term is defined under Cal. Bus. and Prof.
17 Code § 17021.

18 95. Cal. Bus. And Prof. Code § 17200 defines unfair competition as any
19 unlawful, unfair, or fraudulent business act or practice.

20 96. By the conduct alleged hereinabove in the Second through Fifth Claims
21 for Relief, DEFENDANTS have violated the provisions of the Unfair Competition Law, Cal. Bus.
22 & Prof. Code §§ 17200, et seq., for which this Court should issue equitable and injunctive relief,
23 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld or
24 labor taken without proper compensation.

25 97. By and through the unfair and unlawful business practices described
26 hereinabove, DEFENDANTS have obtained valuable property, money, and services from the
27 PLAINTIFFS, and the other members of the CLASS, and has deprived them of valuable rights and
28 benefits guaranteed by law, all to their detriment and to the benefit of DEFENDANTS so as to allow

1 DEFENDANTS to unfairly compete.

2 98. All the acts described herein as violations of, among other things, the
3 Cal. Lab. Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of
4 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and Thereby
5 constitute unfair and unlawful business practices in violation of Cal. Bus. And Prof. Code § 17200
6 et seq.

7 99. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, are
8 further entitled to, and do, seek a declaration that the above described business practices are unfair
9 and unlawful and that an injunctive relief should be issued restraining DEFENDANTS from
10 engaging in any of these unfair and unlawful business practices in the future.

11 100. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have
12 no plan, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
13 practices of DEFENDANTS. As a result of the unfair and unlawful business practices described
14 above, PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered and will
15 continue to suffer irreparable harm unless DEFENDANTS are restrained from continuing to engage
16 in these unfair and unlawful business practices. In addition, DEFENDANTS should be required to
17 disgorge the unpaid moneys to PLAINTIFFS, and the other members of the CALIFORNIA CLASS.

18
19 **SEVENTH CAUSE OF ACTION**

20 **Labor Code Private Attorneys General Act**

21 **[Cal. Labor Code § 2698]**

22 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All DEFENDANTS)**

23 101. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
24 reference, as though fully set forth herein, paragraphs 1 through 100 of this Complaint.

25 102. On January 30, 2008, PLAINTIFFS gave written notice by certified mail to the Labor
26 and Workforce Development Agency and the employer of the specific provisions of this code
27 alleged to have been violated as required by Labor Code § 2699.3. PLAINTIFFS have received a
28 letter from the Labor and Workforce Development Agency ("LWDA") stating that the LWDA

1 does not intend to investigate the allegations. As a result, pursuant to Section 2699.3, Plaintiff may
2 now commence a civil action pursuant to Section 2699.

3 103. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS' failure to pay wages, failure to provide rest and
5 meal period breaks, failure to pay wages and compensation for work without rest and meal period
6 breaks and failure to provide accurate wage statements and maintain accurate time records for
7 PLAINTIFFS and the other members of the CLASS violates applicable Labor Code sections and
8 gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as
9 provided by Labor Code §§ 221, 226, 226.7, 558, 1174 and 1194, applicable Industrial Welfare
10 Commission Wage Orders. Plaintiffs, as aggrieved employees, hereby seeks recovery of civil
11 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of
12 himself and other current and former employees of DEFENDANTS, against whom one or more of
13 the violations of the Labor Code was committed.

14
15 **PRAYER**

16 WHEREFOR, PLAINTIFFS pray for judgment against each Defendant, jointly and
17 severally, as follows:

- 18 A) Compensatory damages, according to proof at trial due PLAINTIFFS and the other
19 members of the COLLECTIVE CLASS and CALIFORNIA CLASS, during the
20 applicable COLLECTIVE CLASS PERIOD and CALIFORNIA CLASS PERIOD
21 plus interest thereon at the statutory rate;
- 22 B) Restitution, according to proof at trial, due PLAINTIFFS and the other members of
23 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD
24 plus interest thereon at the statutory rate;
- 25 C) One (1) hour of pay for each workday in which a rest period was not provided to
26 PLAINTIFFS and each member of the CALIFORNIA CLASS for each four (4) hours
27 of work during the period commencing on the date that is within four years prior to
28 the filing of this Complaint;

- 1 D) One hour of pay for each five (5) hours of work in which a meal period was not
2 provided to PLAINTIFFS and each member of the CALIFORNIA CLASS;
- 3 E) An order temporarily, preliminarily and permanently enjoining and restraining
4 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 5 F) An order requiring DEFENDANTS to provide an accounting of all wages and all
6 sums unlawfully withheld from compensation due to PLAINTIFFS and the other
7 members of the COLLECTIVE and CALIFORNIA CLASSES;
- 8 G) Imposition of a constructive trust upon the assets of the DEFENDANTS to the extent
9 of the sums due to PLAINTIFFS and to the other members of the COLLECTIVE and
10 CALIFORNIA CLASSES;
- 11 H) An award of interest, including prejudgment interest at the legal rate;
- 12 I) An award of statutory damages, including reasonable attorneys' fees and cost of suit;
- 13 J) An award of penalties as available under the law; and,
- 14 K) For all appropriate relief pursuant to 29 U.S.C. § 1132(a)(2), including any
15 applicable interest thereon; and,
- 16 L) Such other and further relief as the Court deems just and proper.

17
18 Dated: April 8, 2008

BLUMENTHAL & NORDREHAUG

19
20 By: s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs

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28

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on issues triable to a jury.

Dated: April 8, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal

Norman B. Blumenthal
Attorneys for Plaintiffs

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